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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/554,288	01/09/2001	Hans Wilhelm Hafner	KKFI40.001AP	3625

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EXAMINER

SHAPIRO, JEFFERY A

ART UNIT

PAPER NUMBER

3653

DATE MAILED: 03/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/554,288

Applicant(s)

HAFNER, HANS WILHELM

Examiner

Jeffrey A. Shapiro

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-13 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-13 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 10-13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wennerstrom et al. Wennerstrom et al discloses the following.

As described in Claims 10 and 19;

1. setting a feed rate for the rotary vane feeder (18);
  2. adjusting a discharge rate of the metering device to a value that is lower than the feed rate of the preceding rotary vane feeder, so that return feed from the rotary-vane feeder to the *source* container takes place;
- (Note that the system of Wennerstrom et al is capable of performing the method as described in Claims 10 and 19, since the incoming feed rate of the rotary feeder (18) can be made to be higher than the outgoing flow rate from the meter—such would appear to be obvious to one of ordinary skill in the art since if the flow rate of the metering device (20) is less than the rotary vane feed rate before it, it would necessarily follow that less material would be expelled by the metering device than was being fed to it leading to a back-up of material, around which the rotary vane feeder would necessarily throw back about itself therefore causing a self-sealing

effect. Note also that despite the metering device (20 and 20") being termed "a constant rate device", that Applicant's metering device necessarily is intended to be maintained at a constant rate while it is at a particular set of conditions and that it would be expedient for one ordinarily skilled in the art to change either the rate of speed of the rotary vane feeder or the metering device, the effects essentially being functional equivalents of each other. See also col. 5, lines 55 and 56)

As described in Claim 11;

3. said adjusting takes into account a filling state of an intermediate container (24) between the rotary-vane feeder and the metering device;

As described in Claim 12;

4. altering a speed of rotation of the metering device to regulate discharge of the metering device (again note that it would be expected that if the speed of rotation is altered of the metering device, that the associated discharge would be regulated—see also col. 5, lines 66-68 and col. 6, line 1);

As described in Claim 13;

5. using a pneumatic feed and altering at least one of an air amount and an air speed to regulate discharge of the metering device (see figure 1, elements 46 and 48 as well as col. 5, lines 40-43 for example);

***Double Patenting***

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3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 10-13 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-15 of U.S. Patent No. 6,041,664.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they describe a method of determining instantaneous mass flow and obtaining an output of a metering device downstream of said flowmeter (see Claims 1 and 15, for example). In addition, the apparatus described in Claims 8-14 is capable of performing the method as described in the claims of the instant application.

5. Claims 10-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-25 of U.S. Patent No. 5,359,900 in view of Kierbow et al. The '900 patent discloses an apparatus for measuring the mass throughput of a flow of pourable material and describes apparatus which in combination with Kierbow et al, provides apparatus and the steps described in the claims of the instant application.

6. Claims 10-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-25 of U.S. Patent No.

5,184,892 in view of Kierbow et al. The '892 patent discloses a system and apparatus for continuous pneumatic gravimetric metering and/or mixing of a flow of pourable material and describes apparatus which in combination with Kierbow et al, provides apparatus and the steps described in the claims of the instant application.

7. Claims 10-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-25 of U.S. Patent No.

5,255,830 in view of Kierbow et al. The '830 patent discloses an apparatus for measuring the mass throughput of a flow of pourable material and describes apparatus which in combination with Kierbow et al, provides apparatus and the steps described in the claims of the instant application.

8. Claims 10-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-25 of U.S. Patent No.

5,301,555 in view of Kierbow et al. The '555 patent discloses an apparatus for measuring the mass throughput of a flow of pourable material and describes apparatus which in combination with Kierbow et al, provides apparatus and the steps described in the claims of the instant application.

9. Claims 10-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending Application No. 09/508,235 in view of Kierbow et al. The combination provides the apparatus and steps described in the claims of the instant application.

This is a provisional obviousness-type double patenting rejection.

10. Claims 10-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending Application No. 09/720,831 in view of Kierbow et al. The combination provides the apparatus and steps described in the claims of the instant application.

This is a provisional obviousness-type double patenting rejection.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Seidl et al, Schora, Jr et al, Selep et al, Moller, Francis and Linn are all cited as examples of rotary vane feeders with metering equipment.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

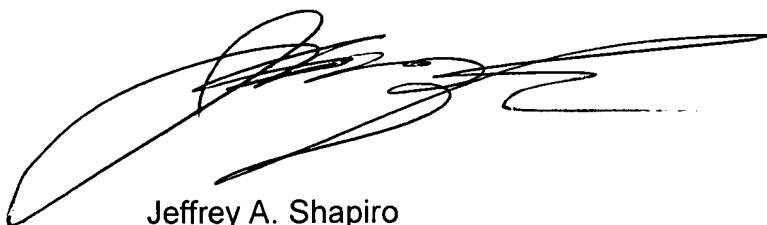
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (703)308-3423. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald P. Walsh can be reached on (703)306-4173. The fax phone numbers for the organization where this application or proceeding is assigned are (703)306-4195 for regular communications and (703)306-4195 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.



Jeffrey A. Shapiro  
Patent Examiner,  
Art Unit 3653



DONALD P. WALSH  
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February 25, 2003